

**CITY COUNCIL OF THE CITY OF SAN DIEGO
SUPPLEMENTAL DOCKET NUMBER 1
FOR THE REGULAR MEETING OF
MONDAY, SEPTEMBER 13, 2004 AT 2:00 P.M.
CITY ADMINISTRATION BUILDING
COUNCIL CHAMBERS – 12TH FLOOR
202 “C” STREET
SAN DIEGO, CA 92101**

SPECIAL ORDER OF BUSINESS

ITEM-S400: Rob Appel BRAVO San Diego Volunteer of the Year Day.

COUNCILMEMBER ZUCCHET’S RECOMMENDATION:

Adopt the following resolution:

(R-2005-263)

Declaring that the Council of the City of San Diego, for and on behalf of the Performing Arts and business communities of San Diego does recognize the exceptional contribution to the Arts that Rob Appel has devoted to BRAVO San Diego by helping to make it the premier Arts and Business event in San Diego;

Proclaiming September 13, 2004 to be “Rob Appel BRAVO San Diego Volunteer of the Year Day” in the City of San Diego.

ADOPTION AGENDA, CONSENT ITEMS

RESOLUTIONS:

* ITEM-S401: World Memorial Release of Souls 9-11 Tribute.

COUNCILMEMBER ZUCCHET'S RECOMMENDATION:

Adopt the following resolution:

(R-2005-262)

Declaring that September 11, 2004 is World Memorial "Release of Souls" 9-11 Tribute Day in the City of San Diego.

* ITEM-S402: Regi Phelps Day.

DEPUTY MAYOR ATKINS' AND COUNCILMEMBER FRYE'S RECOMMENDATION:

Adopt the following resolution:

(R-2005-260)

Commending Regi Phelps for his continued commitment to labor relations;

Proclaiming September 11, 2004 to be "Regi Phelps Day" in the City of San Diego.

ADOPTION AGENDA, CONSENT ITEMS (Continued)

RESOLUTIONS: (Continued)

* ITEM-S403: FY 2004 State Homeland Security Grant Program.

CITY MANAGER'S RECOMMENDATION:

Adopt the following resolution:

(R-2005-255)

Authorizing the City Manager, Deputy City Manager, or Director of the Office of Homeland Security, to accept, expend, appropriate, and administer the grant funds in the amount of \$1,758,903 from the FY 2004 State Homeland Security Grant Program, in accordance with the terms and conditions set forth in the FY 2004 State Homeland Security Grant Program;

Authorizing the City Auditor and Comptroller to establish a special grant fund account to facilitate the grant process.

CITY MANAGER SUPPORTING INFORMATION:

The County of San Diego has been awarded \$10,383,187 under the FY 2004 State Homeland Security Grant Program to prevent, deter, respond to, and recover from incidents of terrorism involving the use of chemical, biological, radiological, nuclear, and explosive weapons and cyber attacks. The County will administer and manage the grant funds for the Operational Area, which has been defined as the 18 incorporated cities in San Diego County, the county and special districts.

The City of San Diego has been allocated \$1,758,903 of these funds to be spent on first responder personal protective equipment, special law enforcement equipment needs, and the City's Interoperable Communications Project. The Police Department and the Fire-Rescue Department will share \$764,735 to purchase standardized personal protective equipment of an appropriate level for response to weapons of mass destruction based on the type of hazard control zone in which the personnel will operate. This equipment will include protective outerwear, boots, gloves, face masks, and breathing apparatus. The Police Department will receive \$589,371 to purchase a Mobile Command Vehicle and other first responder equipment.

Additionally, \$404,797 will be provided to Information Technology and Communications to upgrade the Police Department's 15-year-old mobile data systems that have reached the end of their lifecycle. The funds will be used to purchase mobile data computer equipment for police patrol cars that will allow information sharing between city, county, state and federal agencies, and result in the rapid and timely dissemination of public safety data to field personnel.

ADOPTION AGENDA, CONSENT ITEMS (Continued)

RESOLUTIONS: (Continued)

* ITEM-S403: (Continued)

CITY MANAGER SUPPORTING INFORMATION: (Continued)

This grant, which expires on November 30, 2005, is of a reimbursement nature, which requires the City to initiate the procurement process, encumber funds, receive the equipment, pay the invoices and then request reimbursement from the County. The reimbursement process should normally be completed within 30 days of the City's request to the County. The Auditor's Office will set up a special grant fund account to facilitate the process.

Arellano/Lee/DF

ADOPTION AGENDA, CONSENT ITEMS (Continued)

RESOLUTIONS: (Continued)

* ITEM-S404: FY 2003 State Homeland Security Grant Program-Part II.

CITY MANAGER'S RECOMMENDATION:

Adopt the following resolution:

(R-2005-256)

Authorizing the City Manager, Deputy City Manager, or Director of the Office of Homeland Security to accept, expend, appropriate, and administer the grant funds in the amount of \$1,075,191 from the FY 2003 State Homeland Security Grant Program-Part II, in accordance with the terms and conditions set forth in the FY 2003 State Homeland Security Grant Program-Part II;

Authorizing the City Auditor and Comptroller to establish a special grant fund account to facilitate the grant process.

CITY MANAGER SUPPORTING INFORMATION:

The United States Department of Homeland Security, Office of Domestic Preparedness is providing financial assistance under the FY 2003 State Homeland Security Grant Program - Part II to address equipment, training, planning, exercise, and administrative needs of state and local emergency services first responders.

The County of San Diego has been awarded \$6,689,008 and will administer and manage this grant for the Operational Area, which has been defined as the 18 incorporated cities in San Diego County, the county and the related special districts.

The City of San Diego has been allocated \$1,075,191 of these funds to be spent on first responder personal protective equipment and the City's Interoperable Communications Project. The Police Department and the Fire-Rescue Department will share \$603,022 to purchase standardized personal protective equipment of an appropriate level for response to weapons of mass destruction based on the type of hazard control zone in which the personnel will operate. This equipment will include protective outerwear, boots, gloves, face masks, and breathing apparatus.

Additionally, \$472,170 will be provided to Information Technology and Communications to begin the upgrade of the Police Department's 15-year-old mobile data systems that have reached the end of their lifecycle.

ADOPTION AGENDA, CONSENT ITEMS (Continued)

RESOLUTIONS: (Continued)

* ITEM-S404: (Continued)

CITY MANAGER SUPPORTING INFORMATION: (Continued)

The funds will be used to purchase mobile data computer equipment for police patrol cars that will allow information sharing between city, county, state and federal agencies, and result in the rapid and timely dissemination of public safety data to field personnel.

This grant, which expires on April 30, 2005, is of a reimbursement nature, which requires the City to initiate the procurement process, encumber funds, receive the equipment, pay the invoices and then request reimbursement from the County. The reimbursement process should normally be completed within 30 days of the City's request to the County. The Auditor's Office will set up a special grant fund account to facilitate the process.

Arellano/Lee/DF

ADOPTION AGENDA, DISCUSSION, OTHER LEGISLATIVE ITEMS

ORDINANCE TO BE INTRODUCED:

ITEM-S405: Wastewater System Financing Program.

(See City Manager Report CMR-04-200.)

CITY MANAGER'S RECOMMENDATION:

Introduce the following ordinance:

(O-2005-35)

Introduction of an Ordinance approving the form of and authorizing the issuance of not to exceed \$1,200,000,000 aggregate principal amount of the Public Facilities Financing Authority of the City of San Diego Subordinated Sewer Revenue Bonds, Series 2005A and Series 2005B (payable solely from subordinated installment payments secured by Wastewater System Net Revenues); approving the form of an indenture and approving the form of and authorizing the execution and delivery of a 2005 supplement to the Master Installment Purchase Agreement relating to an installment purchase financing and approving certain other agreements and actions in connection therewith, pursuant to Section 99 of the Charter of the City of San Diego.

NOTE: **6** votes required pursuant to Section 99 of the San Diego City Charter.

ADOPTION AGENDA, DISCUSSION, HEARINGS

NOTICED HEARING:

ITEM-S406: Appeal of Environmental Determination for the Mi Arbolito Project.

Matter of the appeal by Bankers Hill, Hillcrest Park West Community Preservation Group in care of Johnson and Hanson, L.L.P. of the decision by City staff that the subject project is exempt from the California Environmental Quality Act (CEQA) pursuant to Section 15332 of the State CEQA Guidelines.

(See City Manager Report CMR-04-139. Uptown Community Plan Area. District-3.)

(Continued from the meetings of July 13, 2004, Item 335, August 10, 2004, Item 333, and September 7, 2004, Item 330, last continued at the request of the community to give the community time to respond and offer comments.)

NOTE: Hearing open. No testimony taken on 9/7/2004.

Hearing open. No testimony taken on 8/10/2004.

Hearing open. No testimony taken on 7/13/2004.

CITY MANAGER'S RECOMMENDATION:

Adopt the following resolution to deny the appeal, and uphold the Staff determination that the Mi Arbolito Project is exempt from the California Environmental Quality Act per Section 15332 of the State CEQA Guidelines.

(R-2005-)

Adoption of a resolution granting or denying the appeal, and upholding or overturning the Environmental Determination, with appropriate findings to support Council action.

CITY MANAGER SUPPORTING INFORMATION:

The proposed project is a 14-story, 14-unit multi-family residential building over underground parking. The 10,247-square-foot site is zoned MR-400 and is located on the northeast corner of the intersection of Sixth Avenue and Upas Street.

This appeal is before the City Council because of an amendment to CEQA. Effective January 1, 2003, Section 21151(c) of CEQA has been amended as follows: *If a non-elected decision making body of a local lead agency certifies an environmental impact report, approves a negative declaration or mitigated negative declaration, or determines that a project is not subject to this division, that certification, approval, or determination may be appealed to the agency's elected decision making body, if any.*

ADOPTION AGENDA, DISCUSSION, HEARINGS (Continued)

NOTICED HEARING: (Continued)

ITEM-S406: (Continued)

CITY MANAGER SUPPORTING INFORMATION: (Continued)

Pursuant to this amended legislation, Banker's Hill, Hillcrest, Park West Community Preservation Group c/o Johnson & Hanson, LLP filed an appeal of the staff environmental determination to exempt the project on April 12, 2004. However, this new appeal process applies only to the environmental determination.

The appeal is partly based on the allegation that an Environmental Impact Report (EIR) should have been prepared for the project. CEQA and case law require the preparation of an EIR when there is a fair argument that there is substantial evidence, in light of the whole record, that a project may have a significant impact on the environment. Section 21080(e) of CEQA states that ". . . substantial evidence includes fact, a reasonable assumption predicated upon fact, or expert opinion supported by fact. Substantial evidence is not argument, speculation, unsubstantiated opinion or narrative..."

The exemption prepared for this project is a categorical exemption found in Section 15332 of the State CEQA guidelines (Infill Development Projects). The appeal is also partly based on the following standard for using categorical exemptions:

Section 15300.2 (c) - Significant effect. A categorical exemption shall not be used for an activity where there is a reasonable possibility that the activity will have a significant effect on the environment due to **unusual circumstances** [emphasis added].

Finally, the appeal is also based on the applicability of the following conditions. A finding that these conditions have been met is a necessary precedent to using the Section 15332 exemption:

Section 15332 (a) - The project is consistent with the applicable general plan designation and all applicable general plan policies as well as with applicable zoning designation and regulations.

Section 15332 (d) - Approval of the project would not result in any significant effects relating to traffic, noise, air quality, or water quality.

The staff response to each of these challenges has been provided below within the list of the appellants' specific concerns.

ADOPTION AGENDA, DISCUSSION, HEARINGS (Continued)

NOTICED HEARING: (Continued)

ITEM-S406: (Continued)

CITY MANAGER SUPPORTING INFORMATION: (Continued)

Pursuant to the issued permits noted below, construction of the underground parking garage is currently underway on the site.

<u>Date Submitted</u>	<u>Permit Type</u>	<u>Application #</u>	<u>Status</u>
March 27, 2003	Map Waiver and SDP	6686	Not Completed; Withdrawn
June 23, 2003	Grading/Temp Shoring	10278	(Approved, W-51473) Closed.
July 16, 2003	Building Permit: Footings	11489	(Approved, # 21521)
October 2, 2003	Building Permit: Building	15900	Approval Pending
January 7, 2004	Tentative Map	19032	Withdrawn

Because the Map Waiver and Tentative Map applications placed the City on notice that the project may require an approval by the Planning Commission (which would be deemed a "discretionary" decision for purposes of CEQA), the Environmental Analysis Section (EAS) of the Development Services Department reviewed this project assuming that the applications may be resubmitted. Since this project did not include an application for a Tentative Map or Map Waiver at the time it was reviewed by EAS, EAS could not deem this project to be a "discretionary" project for CEQA purposes. However, since Mi Arbolito, LLC had twice placed the City on notice that the project may require a discretionary decision; EAS considered the CEQA review requirements for this project assuming it may include a discretionary decision in the future.

FISCAL IMPACT:

All costs associated with processing approvals of this project are paid from an existing fee paid by the applicant and, possibly, a future deposit account that would be maintained by the applicant if the applicant re-submits an application for a discretionary approval. Staff costs associated with processing this appeal have been borne by the Development Services Department because there is currently no deposit on account with Development Services.

Loveland/Christiansen/CZ